

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- X
KAITLYN TIKKUN,

Plaintiff,

-versus-

05 CV 9901 (KMK)(JCF)

THE CITY OF NEW YORK, et al.

Defendants.

----- X

ANSWER

Defendants The City of New York, Michael Bloomberg, Raymond Kelly, Joseph Esposito, Thomas Graham, Bruce Smolka, James Essig, John Colgan, Martin Horn and Robert Davoren (“Defendants”), by their attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the Complaint, respectfully allege, upon information and belief, as follows:

AS TO THE “PRELIMINARY STATEMENT”

1. Defendants deny the allegations set forth in paragraph "1" of the Complaint, except admit that plaintiff seeks relief.
2. Defendants deny the allegations set forth in paragraph "2" of the Complaint.
3. Defendants deny the allegations set forth in paragraph "3" of the Complaint.
4. Defendants deny the allegations set forth in paragraph "4" of the Complaint.

AS TO "JURISDICTION"

5. Defendants deny the allegations set forth in paragraph "5" of the Complaint, except admit that plaintiff purports to invoke the Court's jurisdiction as set forth therein.

6. Defendants deny the allegations set forth in paragraph "6" of the Complaint, except admit that plaintiff purports to invoke the Court's jurisdiction as set forth therein.

7. Defendants deny the allegations set forth in paragraph "7" of the Complaint.

8. Defendants deny the allegations set forth in paragraph "8" of the Complaint, except admit that plaintiff purports to invoke the Court's jurisdiction as set forth therein.

AS TO "VENUE"

9. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the Complaint.

AS TO "JURY DEMAND"

10. Defendants deny the allegations set forth in paragraph "10" of the Complaint, except admit that plaintiff demands a trial by jury.

AS TO "PARTIES"

11. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "11" of the Complaint.

12. Defendants deny the allegations set forth in paragraph "12" of the Complaint, except admit that The City of New York is a municipal corporation duly organized and operating under the laws of the State of New York.

13. Defendants deny the allegations set forth in paragraph “13” of the Complaint, except admit that the City of New York maintains the New York City Police Department.

14. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "14" of the Complaint.

15. Defendants deny the allegations set forth in paragraph “15” of the Complaint, except admit that the City of New York maintains the New York City Department of Corrections.

16. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "16" of the Complaint.

17. Defendants deny the allegations set forth in paragraph "17" of the Complaint except admit that Michael Bloomberg is the Mayor of the City of New York.

18. Defendants deny the allegations set forth in paragraph “18” of the Complaint, except admit that Raymond Kelly is the Commissioner of Police of the City of New York.

19. Defendants deny the allegations set forth in paragraph “19” of the Complaint, except admit that Joseph Esposito is employed by the City of New York.

20. Defendants deny the allegations set forth in paragraph “20” of the Complaint, except admit that Thomas Graham is employed by the City of New York.

21. Defendants deny the allegations set forth in paragraph “21” of the Complaint, except admit that Bruce Smolka is employed by the City of New York.

22. Defendants deny the allegations set forth in paragraph “22” of the Complaint, except admit that James Essig is employed by the City of New York.

23. Defendants deny the allegations set forth in paragraph "23" of the Complaint, except admit that John J. Colgan is employed by the City of New York.

24. Defendants deny the allegations set forth in paragraph "24" of the Complaint, except admit that Martin Horn is employed by the City of New York.

25. Defendants deny the allegations set forth in paragraph "25" of the Complaint, except admit that Robert Davoren is employed by the City of New York.

26. Defendants deny the allegations set forth in paragraph "26" of the Complaint.

27. Defendants deny the allegations set forth in paragraph "27" of the Complaint, except admit that Bloomberg, Kelly, Esposito, Graham, Smolka, Essig, Colgan, Horn and Davoren are employees of the City of New York.

28. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "28" of the Complaint.

29. Defendants deny the allegations set forth in paragraph "29" of the Complaint.

30. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "30" of the Complaint.

31. Defendants deny the allegations set forth in paragraph "31" of the Complaint.

AS TO "DEFENDANTS' POLICIES, CUSTOMS, AND PRACTICES"

32. Defendants deny the allegations set forth in paragraph "32" of the Complaint except admit that the Republican National Convention was held in New York City during the end of August and beginning of September 2004 and that the New York Police Department anticipated many demonstrators.

33. Defendants deny the allegations set forth in paragraph "33" of the Complaint except admit that the City prepared for many demonstrators.

34. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "34" of the Complaint except admit that the City prepared for many potential arrests.

35. Defendants deny the allegations set forth in paragraph "35" of the Complaint.

36. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "36" of the Complaint.

AS TO "Policy to Excessively Detain Individuals for Minor Offenses"

37. Defendants deny the allegations set forth in paragraph "37" of the Complaint.

38. Defendants deny the allegations set forth in paragraph "38" of the Complaint.

39. Defendants deny the allegations set forth in paragraph "39" of the Complaint.

40. Defendants deny the allegations set forth in paragraph "40" of the Complaint.

AS TO "Defendants' Unconstitutional Mass Arrest Policy"

41. Defendants deny the allegations set forth in paragraph "41" of the Complaint.

42. Defendants deny the allegations set forth in paragraph "42" of the Complaint.

43. Defendants deny the allegations set forth in paragraph "43" of the Complaint.

44. Defendants deny the allegations set forth in paragraph "44" of the Complaint.

45. Defendants deny the allegations set forth in paragraph "45" of the Complaint.

AS TO “Defendants’ Policy, Custom or Practice of permitting
widespread sexual harassment of women detainees”

46. Defendants deny the allegations set forth in paragraph "46" of the Complaint.

47. Defendants deny the allegations set forth in paragraph "47" of the Complaint.

48. Defendants deny the allegations set forth in paragraph "48" of the Complaint.

AS TO “Defendants’ Policy, Custom or Practice of engaging
in unlawful strip searches of detainees charged with misdemeanor offenses”

49. Defendants deny the allegations set forth in paragraph "49" of the Complaint.

50. Defendants deny the allegations set forth in paragraph "50" of the Complaint.

51. Defendants deny the allegations set forth in paragraph "51" of the Complaint.

AS TO “Defendants’ Policy, Custom or Practice of engaging
in unlawful searches of transgender detainees”

52. Defendants deny the allegations set forth in paragraph "52" of the Complaint.

53. Defendants deny the allegations set forth in paragraph "53" of the Complaint.

54. Defendants deny the allegations set forth in paragraph "54" of the Complaint.

55. Defendants deny the allegations set forth in paragraph "55" of the Complaint.

56. Defendants deny the allegations set forth in paragraph "56" of the Complaint.

AS TO “FACTUAL ALLEGATIONS”

57. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "57" of the Complaint.

58. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "58" of the Complaint.

59. Defendants deny the allegations set forth in paragraph "59" of the Complaint.

60. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "60" of the Complaint.

61. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "61" of the Complaint.

62. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "62" of the Complaint.

63. Defendants deny the allegations set forth in paragraph "63" of the Complaint.

64. Defendants deny the allegations set forth in paragraph "64" of the Complaint.

65. Defendants deny the allegations set forth in paragraph "65" of the Complaint.

66. Defendants deny the allegations set forth in paragraph "66" of the Complaint.

67. Defendants deny the allegations set forth in paragraph "67" of the Complaint.

68. Defendants deny the allegations set forth in paragraph "68" of the Complaint.

69. Defendants deny the allegations set forth in paragraph "69" of the Complaint.

70. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "70" of the Complaint.

71. Defendants deny the allegations set forth in paragraph "71" of the Complaint.

72. Defendants deny the allegations set forth in paragraph "72" of the Complaint.

73. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "73" of the Complaint.

74. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "74" of the Complaint.

75. Defendants deny the allegations set forth in paragraph "75" of the Complaint.

76. Defendants deny the allegations set forth in paragraph "76" of the Complaint.

77. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "77" of the Complaint.

78. Defendants deny the allegations set forth in paragraph "78" of the Complaint.

79. Defendants deny the allegations set forth in paragraph "79" of the Complaint.

80. Defendants deny the allegations set forth in paragraph "80" of the Complaint.

81. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "81" of the Complaint.

82. Defendants deny the allegations set forth in paragraph "82" of the Complaint.

83. Defendants deny the allegations set forth in paragraph "83" of the Complaint.

84. Defendants deny the allegations set forth in paragraph "84" of the Complaint.

85. Defendants deny the allegations set forth in paragraph "85" of the Complaint.

86. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "86" of the Complaint.

87. Defendants deny the allegations set forth in paragraph "87" of the Complaint.

88. Defendants deny the allegations set forth in paragraph "88" of the Complaint.

89. Defendants deny the allegations set forth in paragraph "89" of the Complaint.

90. Defendants deny the allegations set forth in paragraph "90" of the Complaint.

91. Defendants deny the allegations set forth in paragraph "91" of the Complaint.

92. Defendants deny the allegations set forth in paragraph "92" of the Complaint.

93. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "93" of the Complaint.

94. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "94" of the Complaint.

95. Defendants deny the allegations set forth in paragraph "95" of the Complaint.

“FEDERAL CAUSES OF ACTION”

AS TO “First Claim for Relief”

96. In response to the allegations set forth in paragraph “96” of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

97. Defendants deny the allegations set forth in paragraph "97" of the Complaint.

98. Defendants deny the allegations set forth in paragraph "98" of the Complaint.

99. Defendants deny the allegations set forth in paragraph "99" of the Complaint.

100. Defendants deny the allegations set forth in paragraph "100" of the Complaint.

101. Defendants deny the allegations set forth in paragraph "101" of the Complaint.

AS TO “Second Claim for Relief”

102. In response to the allegations set forth in paragraph “102” of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

103. Defendants deny the allegations set forth in paragraph "103" of the Complaint.

104. Defendants deny the allegations set forth in paragraph "104" of the Complaint.

AS TO "Third Claim for Relief"

105. In response to the allegations set forth in paragraph "105" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

106. Defendants deny the allegations set forth in paragraph "106" of the Complaint.

107. Defendants deny the allegations set forth in paragraph "107" of the Complaint.

108. Defendants deny the allegations set forth in paragraph "108" of the Complaint.

109. Defendants deny the allegations set forth in paragraph "109" of the Complaint.

110. Defendants deny the allegations set forth in paragraph "110" of the Complaint.

111. Defendants deny the allegations set forth in paragraph "111" of the Complaint.

112. Defendants deny the allegations set forth in paragraph "112" of the Complaint.

113. Defendants deny the allegations set forth in paragraph "113" of the Complaint.

114. Defendants deny the allegations set forth in paragraph "114" of the Complaint.

115. Defendants deny the allegations set forth in paragraph "115" of the Complaint.

AS TO "Fourth Claim for Relief"

116. In response to the allegations set forth in paragraph "116" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

117. Defendants deny the allegations set forth in paragraph "117" of the Complaint.

118. Defendants deny the allegations set forth in paragraph "118" of the Complaint.

119. Defendants deny the allegations set forth in paragraph "119" of the Complaint.

120. Defendants deny the allegations set forth in paragraph "120" of the Complaint.

AS TO "Fifth Claim for Relief"

121. In response to the allegations set forth in paragraph "121" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

122. Defendants deny the allegations set forth in paragraph "122" of the Complaint.

123. Defendants deny the allegations set forth in paragraph "123" of the Complaint.

AS TO "Sixth Claim for Relief"

124. In response to the allegations set forth in paragraph "124" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

125. Defendants deny the allegations set forth in paragraph "125" of the Complaint.

126. Defendants deny the allegations set forth in paragraph "126" of the Complaint.

127. Defendants deny the allegations set forth in paragraph "127" of the Complaint.

AS TO "Seventh Claim for Relief"

128. In response to the allegations set forth in paragraph "128" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

129. Defendants deny the allegations set forth in paragraph "129" of the Complaint.

130. Defendants deny the allegations set forth in paragraph "130" of the Complaint.

131. Defendants deny the allegations set forth in paragraph "131" of the Complaint.

132. Defendants deny the allegations set forth in paragraph "132" of the Complaint.

133. Defendants deny the allegations set forth in paragraph "133" of the Complaint.

134. Defendants deny the allegations set forth in paragraph "134" of the Complaint.

AS TO "PENDANT STATE CLAIMS"

135. In response to the allegations set forth in paragraph "135" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

136. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "136" of the Complaint.

137. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "137" of the Complaint.

138. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "138" of the Complaint.

139. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "139" of the Complaint.

140. Defendants deny the allegations set forth in paragraph "140" of the Complaint.

141. Defendants deny the allegations set forth in paragraph "141" of the Complaint.

142. Defendants deny the allegations set forth in paragraph "142" of the Complaint.

AS TO "First Claim for Relief"

143. In response to the allegations set forth in paragraph "143" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

144. Defendants deny the allegations set forth in paragraph "144" of the Complaint.

145. Defendants deny the allegations set forth in paragraph "145" of the Complaint.

146. Defendants deny the allegations set forth in paragraph "146" of the Complaint.

AS TO "Second Claim for Relief"

147. In response to the allegations set forth in paragraph "147" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

148. Defendants deny the allegations set forth in paragraph "148" of the Complaint.

149. Defendants deny the allegations set forth in paragraph "149" of the Complaint.

150. Defendants deny the allegations set forth in paragraph "150" of the Complaint.

151. Defendants deny the allegations set forth in paragraph "151" of the Complaint.

AS TO "Third Claim for Relief"

152. In response to the allegations set forth in paragraph "152" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

153. Defendants deny the allegations set forth in paragraph "153" of the Complaint.

154. Defendants deny the allegations set forth in paragraph "154" of the Complaint.

AS TO "Fourth Claim for Relief"

155. In response to the allegations set forth in paragraph "155" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

156. Defendants deny the allegations set forth in paragraph "156" of the Complaint.

157. Defendants deny the allegations set forth in paragraph "157" of the Complaint.

158. Defendants deny the allegations set forth in paragraph "158" of the Complaint.

159. Defendants deny the allegations set forth in paragraph "159" of the Complaint.

160. Defendants deny the allegations set forth in paragraph "160" of the Complaint.

AS TO "Fifth Claim for Relief"

161. In response to the allegations set forth in paragraph "161" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

162. Defendants deny the allegations set forth in paragraph "162" of the Complaint.

163. Defendants deny the allegations set forth in paragraph "163" of the Complaint.

164. Defendants deny the allegations set forth in paragraph "164" of the Complaint.

165. Defendants deny the allegations set forth in paragraph "165" of the Complaint.

166. Defendants deny the allegations set forth in paragraph "166" of the Complaint.

167. Defendants deny the allegations set forth in paragraph "167" of the Complaint.

168. Defendants deny the allegations set forth in paragraph "168" of the Complaint.

169. Defendants deny the allegations set forth in paragraph "169" of the Complaint.

170. Defendants deny the allegations set forth in paragraph "170" of the Complaint.

171. Defendants deny the allegations set forth in paragraph "171" of the Complaint.

172. Defendants deny the allegations set forth in paragraph "172" of the Complaint.

173. Defendants deny the allegations set forth in paragraph "173" of the Complaint.

AS TO "Sixth Claim for Relief"

174. In response to the allegations set forth in paragraph "174" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

175. Defendants deny the allegations set forth in paragraph "175" of the Complaint.

176. Defendants deny the allegations set forth in paragraph "176" of the Complaint.

177. Defendants deny the allegations set forth in paragraph "177" of the Complaint.

178. Defendants deny the allegations set forth in paragraph "178" of the Complaint.

AS TO "Seventh Claim for Relief"

179. In response to the allegations set forth in paragraph "179" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

180. Defendants deny the allegations set forth in paragraph "180" of the Complaint.

181. Defendants deny the allegations set forth in paragraph "181" of the Complaint.

182. Defendants deny the allegations set forth in paragraph "182" of the Complaint.

183. Defendants deny the allegations set forth in paragraph "183" of the Complaint.

184. Defendants deny the allegations set forth in paragraph "184" of the Complaint.

AS TO "Eighth Claim for Relief"

185. In response to the allegations set forth in paragraph "185" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

186. Defendants deny the allegations set forth in paragraph "186" of the Complaint.

187. Defendants deny the allegations set forth in paragraph "187" of the Complaint.

188. Defendants deny the allegations set forth in paragraph "188" of the Complaint.

189. Defendants deny the allegations set forth in paragraph "189" of the Complaint.

190. Defendants deny the allegations set forth in paragraph "190" of the Complaint.

AS TO "Ninth Claim for Relief"

191. In response to the allegations set forth in paragraph "191" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

192. Defendants deny the allegations set forth in paragraph "192" of the Complaint.

193. Defendants deny the allegations set forth in paragraph "193" of the Complaint.

194. Defendants deny the allegations set forth in paragraph "194" of the Complaint.

195. Defendants deny the allegations set forth in paragraph "195" of the Complaint.

AS TO “Tenth Claim for Relief”

196. In response to the allegations set forth in paragraph “196” of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

197. Defendants deny the allegations set forth in paragraph "197" of the Complaint.

198. Defendants deny the allegations set forth in paragraph "198" of the Complaint.

199. Defendants deny the allegations set forth in paragraph "199" of the Complaint.

200. Defendants deny the allegations set forth in paragraph "200" of the Complaint.

AS TO “[misnumbered] Tenth Claim for Relief”

201. In response to the allegations set forth in paragraph “201” of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

202. Defendants deny the allegations set forth in paragraph "202" of the Complaint.

203. Defendants deny the allegations set forth in paragraph "203" of the Complaint.

204. Defendants deny the allegations set forth in paragraph "204" of the Complaint.

AS TO "Eleventh Claim for Relief"

205. In response to the allegations set forth in paragraph "205" of the Complaint, Defendants repeat and re-allege all of the preceding paragraphs of the answer, as if fully set forth herein.

206. Defendants deny the allegations set forth in paragraph "206" of the Complaint.

207. Defendants deny the remaining allegations of the Complaint.

FIRST AFFIRMATIVE DEFENSE

208. The Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

209. There was probable cause for plaintiff's arrest, detention and prosecution.

THIRD AFFIRMATIVE DEFENSE

210. Any and all injuries alleged in the Complaint were caused, in whole or in part, by plaintiff's culpable, negligent or intervening conduct and were not the proximate result of any act of Defendants.

FOURTH AFFIRMATIVE DEFENSE

211. This action is barred, in whole or in part, by the doctrines of *res judicata* and collateral estoppel.

FIFTH AFFIRMATIVE DEFENSE

212. Defendants have not violated any clearly established constitutional or statutory rights of which a reasonable person would have known and, therefore, they are entitled to qualified immunity.

SIXTH AFFIRMATIVE DEFENSE

213. Punitive damages are not recoverable against The City of New York. Punitive damages cannot be recovered against the other Defendants and, if available, the amount of such damages shall be limited by applicable state and federal law, including due process and other provisions of law.

SEVENTH AFFIRMATIVE DEFENSE

214. Defendants have not violated any rights, privileges or immunities secured to the plaintiff under the Constitution, the laws of the United States, the laws of the State of New York or any political subdivision thereof, nor have Defendants violated any act of Congress.

EIGHTH AFFIRMATIVE DEFENSE

215. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably in the proper and lawful exercise of their discretion.

NINTH AFFIRMATIVE DEFENSE

216. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably in the proper and lawful exercise of their discretion. Therefore, Defendant The City of New York is entitled to governmental immunity from liability.

TENTH AFFIRMATIVE DEFENSE

217. Plaintiff's claims are barred, in whole or in part, by their failure to comply with the conditions precedent to suit including, but not limited to, New York General Municipal Law §§ 50-e and 50-i.

ELEVENTH AFFIRMATIVE DEFENSE

218. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitations.

TWELFTH AFFIRMATIVE DEFENSE

219. Plaintiff's claims are barred, in whole or in part, by the doctrine of absolute immunity.

THIRTEENTH AFFIRMATIVE DEFENSE

220. Process, or service of process, upon one or more of the Defendants was insufficient.

FOURTEENTH AFFIRMATIVE DEFENSE

221. The Court lacks personal jurisdiction over one or more of the Defendants.

FIFTEENTH AFFIRMATIVE DEFENSE

222. To the extent that Defendants used any force, it was reasonable, necessary and justified to accomplish their official duties and to protect their own physical safety and the physical safety of others.

SIXTEENTH AFFIRMATIVE DEFENSE

223. Plaintiff failed to mitigate plaintiff's damages.

SEVENTEENTH AFFIRMATIVE DEFENSE

224. Plaintiff consented to the acts about which plaintiff complains.

EIGHTEENTH AFFIRMATIVE DEFENSE

225. Plaintiff's claims are barred, in whole or in part, by plaintiff's contributory or comparative negligence and by plaintiff's assumption of the risk.

NINETEENTH AFFIRMATIVE DEFENSE

226. Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, waiver and estoppel.

TWENTIETH AFFIRMATIVE DEFENSE

227. Plaintiff lacks standing to demand declaratory or injunctive relief.

WHEREFORE, Defendants request judgment dismissing the Complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
May 22, 2006

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street, Room 6-306
New York, New York 10007
(212) 788-8026

By: _____/s/_____
James Mirro (JM 2265)
Special Assistant Corporation Counsel
Special Federal Litigation Division

05 CV 9901 (KMK) (JCF)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KAITLYN TIKKUN, et al.,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

ANSWER

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York, N.Y. 10007